

EXHIBIT C

DEPOSITION OF OFFICER JUSTIN BELLIGAN

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

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| | | |
|----------------------------------|---|-------------------------|
| PATRICIA HIVES, individually |) | |
| and as co-successor in interest |) | |
| to Decedent Jacorey Calhoun, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case: 4:15-CV-02490-DMR |
| |) | |
| COUNTY OF ALAMEDA, a municipal |) | |
| corporation; DEREK THOMS, |) | |
| individually and in his official |) | |
| capacity as deputy for the |) | |
| COUNTY OF ALAMEDA, et al., |) | |
| |) | |
| Defendants. |) | |
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| M.C., by and through his |) | |
| guardian ad litem ARION |) | |
| GUILLORY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| COUNTY OF ALAMEDA, a municipal |) | |
| corporation; DEREK THOMS, |) | |
| individually and in his official |) | |
| capacity as deputy for the |) | |
| COUNTY OF ALAMEDA, et al., |) | |
| |) | |
| Defendants. |) | CERTIFIED COPY |
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DEPOSITION OF OFFICER JUSTIN BELLIGAN

THURSDAY, MAY 19, 2016

REPORTED BY: ANGELICA R. GUTIERREZ, CSR NO. 13292

DEPOSITION OF OFFICER JUSTIN BELLIGAN

1 Q. The dog watch.

2 So you hear this call, do you recall which
3 officer it was who gave the call? Was it May or Khem?

4 A. That, I'm not sure.

5 Q. One of them? Do you recall what exactly they
6 said?

7 A. I cannot quote them, but I do remember they
8 said something to the effect that they were behind a
9 vehicle wanted in a 2125, home invasion robbery.

10 Q. You said 2125?

11 A. Yes, sir.

12 Q. And when you said they were behind a vehicle
13 in a 2125, what did that indicate to you?

14 A. It indicated that they were behind a felony --
15 a dangerous felony vehicle.

16 Q. Okay. Does that mean to you that that vehicle
17 was stopped?

18 A. Oh, no. It meant -- so when they said that
19 they were behind -- I think they were waiting for a
20 cover unit, which was myself, to initiate a traffic
21 stop, so that two units could be on-scene. Two police
22 cars.

23 Q. Okay. So they were just trailing behind at
24 this point?

25 A. I believe so, sir.

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1 Q. Did you give some special indication to let
2 them know you were present?

3 A. No. But I believe that they saw me 'cause of
4 how close -- or proximity, our vehicles crossed path.

5 Q. Would that mean that you were headed in the
6 opposite direction when you saw them initially?

7 A. Yes, sir.

8 Q. And what did you do? You turned around and
9 came up behind them?

10 A. Yes, that's correct.

11 Q. So you began trailing this Volvo, too; is that
12 correct?

13 A. That is correct.

14 Q. What about after you began trailing this Volvo
15 with Officer Khem and Mai's car?

16 A. Officer Mai and Khem, they initiated a traffic
17 stop on the vehicle.

18 Q. How do you know they did that?

19 A. They activated the red lights and siren.

20 Q. Okay. Did the vehicle pull over?

21 A. Yes, it did.

22 Q. Immediately?

23 A. I'm not sure exactly how long it took for the
24 vehicle, I just know that it pulled over it. It did
25 pull over in the middle of the street going up a side

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1 street, it was maybe 51st Avenue, really close to
2 International Boulevard.

3 Q. So had the vehicle turned off of International
4 once you started following with Officer Mai and Khem?

5 A. The vehicle did turn off International
6 Boulevard.

7 Q. Okay. How long did you follow before Officer
8 Mai and Khem initiated the traffic stop?

9 A. I would estimate maybe one block.

10 Q. So pretty soon after you caught up to them
11 they initiated the traffic stop?

12 A. Yes, sir.

13 Q. You didn't give any call over the radio that
14 you were there as well?

15 A. I cannot remember if I indicated over the air.
16 I do not believe I did due to the fact that I would let
17 Officer Mai and Khem kind of have the air at that
18 moment.

19 Q. Is there a reason you wanted to let them have
20 the air?

21 A. Just 'cause they were the first vehicle
22 spotting this vehicle that's wanted in this home
23 invasion robbery, so --

24 Q. Did you have an understanding of when this
25 home invasion had occurred?

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1 Q. Why were you doing a felony stop?

2 A. Due to the fact that this vehicle was
3 associated with home invasion robbery.

4 Q. Could you see inside the vehicle? Could you
5 see who the driver was?

6 A. I could, at that time, see there was one
7 occupant and he was a male black. That was it.

8 Q. Could you see if there was anybody else in the
9 car?

10 A. I couldn't see if there was anyone laying
11 down, but you could see there was only one person
12 seated in the driver's seat.

13 Q. Could you see the person's hands or anything
14 like that?

15 A. At some point, yes. I believe the person did
16 have hands on the steering wheel. And then -- but also
17 moving, they would move their hands around a lot as
18 well.

19 Q. Okay. Now, did you see the person's face at
20 all?

21 A. At that point, no. I did not see the face.

22 Q. Did you have an idea of who this person was?

23 A. No, I did not.

24 Q. Did you have an idea of whether this person
25 was the registered owner of this vehicle?

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1 Q. When you exited your vehicle which way did you
2 travel to get to this position of cover, you said to
3 the right of officer Khem and Mai's car?

4 A. I exited my vehicle. I then walked behind my
5 vehicle over to -- and then towards their direction.

6 Q. Okay.

7 A. So I went behind my vehicle.

8 Q. And then forward?

9 A. And then forward.

10 Q. Is there a reason you went behind your vehicle
11 and not in front of your vehicle?

12 A. At that point I was trying to find a position
13 of cover, where I could best see the driver.

14 And Officer Mai was already standing at his
15 driver side V of his door. I thought it would be a
16 better position for me to view the situation by going
17 around my vehicle.

18 Q. Okay. What about Officer Khem? Did you see
19 what he was doing?

20 A. I believe he was at the V of his door as well,
21 on the passenger side.

22 Q. Okay. How close and -- or I'll ask this: So
23 you went to the back of your car and then came up kind
24 of to the right of Officer Khem and Mai's car; is that
25 right?

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1 A. Yes, sir.

2 Q. Were you right next to Officer Khem then?

3 A. I would say I was. From what I remember I was
4 even with Officer Khem. But I was more -- that would
5 be east of his. And I believe I was starting to go to
6 this -- a vehicle that was parked on the curb-line
7 right there.

8 Q. Okay. And when you say you started to go to
9 it what do you mean?

10 A. That's where I was -- I don't know if I made
11 it to that position before the vehicle accelerated.

12 Q. Okay. So the vehicle -- the vehicle you are
13 talking about is the silver Volvo, right?

14 A. Yes.

15 Q. That's suspected to be involved in this home
16 invasion?

17 A. Yes, sir.

18 Q. It takes off?

19 A. Yes, sir.

20 Q. What do you?

21 A. I ran back to my vehicle and entered the
22 driver's side.

23 Q. Did you give chase?

24 A. Yes, sir.

25 Q. And did Officers Mai and Khem give chase?

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1 A. Yes, sir.

2 Q. Were you following behind Officers Mai and
3 Khem?

4 A. Due to the fact they were closer to vehicle
5 they were a significant amount of in front of me, so I
6 was trying to catch up to their location via the
7 radio transmissions of Officer Khem.

8 Q. Okay. Did you call into your sergeant to let
9 them know you were going to do a vehicle pursuit?

10 A. No, sir. Officer Khem asked for permission to
11 pursue the vehicle.

12 Q. You heard this over the radio?

13 A. Yes, sir.

14 Q. Permission given, granted?

15 A. Yes, it was. By Sergeant Encinas.

16 Q. Okay. Was Sergeant Encinas the patrol
17 sergeant at that night?

18 A. He was one of the patrol sergeants but he was
19 our direct supervisor.

20 Q. Okay. I would assume that you activated your
21 emergency lights.

22 A. Yes, sir.

23 Q. Sirens?

24 A. Yes, sir.

25 Q. How far ahead were Officers Mai and Khem when

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1 Q. So you caught up with them, said the vehicle
2 was disabled, just where again?

3 A. At the dead end of 50th Avenue just below
4 Coliseum Avenue.

5 Q. Okay. Did you stay there with those officers
6 or did you stop quickly and then go on and try to
7 pursue this Volvo?

8 A. I continued to pursue the Volvo.

9 Q. So you could see this Volvo?

10 A. Yes, sir.

11 Q. As you caught up to this dead end of 50th
12 Avenue the Volvo was in your sight?

13 A. Yes, sir.

14 Q. Did it stop somewhere or how did it go ahead
15 out of the dead end?

16 A. He proceeded in reverse, driving back towards
17 my direction.

18 Q. Okay. And what did you do?

19 A. I maneuvered my vehicle out of his direction
20 so that he wouldn't ram into my vehicle.

21 Q. Why wouldn't you just create a block so he
22 couldn't go anywhere?

23 A. At that point I felt the speed he was
24 traveling at would have really injured myself at that
25 point.

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1 of the window?

2 A. I did not see him throw anything.

3 Q. Did you get an opportunity to see the person
4 who was driving?

5 A. Yes, sir.

6 Q. Could you see if there was anyone else at that
7 time?

8 A. I did not see anyone else in the car.

9 Q. Did you have any indication, at that time when
10 he was backing up towards you, who this person is?

11 A. No indication. No, sir.

12 Q. Okay. But now they are engaged in fleeing.
13 And a felony fleeing, as a matter of fact, at that
14 point; is that right?

15 A. Yes, sir.

16 Q. Now you want to arrest this person?

17 A. Yes, sir.

18 Q. Okay. Despite whether or not they are really
19 involved in these home robberies you want to arrest
20 them for taking you on this high-speed chase; is that
21 fair to say?

22 A. I wouldn't say that. I would say that the
23 crime was still -- the home invasion robbery is still
24 the reason why we initiated the car stop. The pursuit
25 then is just an added charge, I guess you can say.

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1 she also gave out radio traffic, so she was involved as
2 well.

3 Q. Okay. After you saw them going east on San
4 Leandro, or at least you say you obtained the visual of
5 them going east, did you see them again anywhere else
6 or did you begin following behind them after you
7 obtained the visual?

8 A. I began following in that direction, eastbound
9 on San Leandro Street.

10 Q. Did you catch up to them?

11 A. No, sir.

12 Q. When was the next time you saw the vehicle,
13 that is the silver Volvo?

14 A. The next time I saw the vehicle was when
15 Officer Stein put out over the radio that he relocated
16 the vehicle at 105th and Edes, maybe 105th and Edes.
17 And he was asking units to set up a perimeter around
18 that location.

19 Q. How long was it from the time that you saw the
20 vehicle going east on San Leandro with Officer Vargas
21 behind it, to the time Officer Stein puts over the
22 radio that he found the vehicle near 105th and Edes?

23 A. I would estimate one minute to two minutes.

24 Q. All right. Did you then go to 155th and Edes?

25 A. Yes, sir.

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1 Q. What did you do?

2 A. I took a perimeter position on Edes Avenue
3 just east of --

4 Q. What's shown on the diagram?

5 A. Yes, sir.

6 Q. Okay. And you said there were four cars
7 present. I forgot how many officers you said you saw
8 present.

9 A. I believe I estimated maybe five officers.

10 Q. Okay. Were you given any direction about what
11 you were supposed to do from anyone that was there?

12 A. I believe Officer Stein, at this point, was
13 stating or had stated that he saw someone running into
14 the yards on Edes Avenue, into the yards right there.

15 Q. Okay. What's the protocol in that scenario,
16 where you have a suspect of a crime, and a violent
17 crime at that, that may have run into some yards and/or
18 residences? Do you have duty to warn the neighbors,
19 tell everybody hey, watch out, there may be somebody in
20 your yard?

21 A. At that point I think our duty was to
22 establish a perimeter around this to try to contain
23 this subject.

24 Q. Okay. There's that word again, contain.
25 Establish a perimeter.

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1 And so you were helping to establish that
2 perimeter?

3 A. Yes, sir.

4 Q. Were you waiting for a sergeant or someone to
5 come on the scene to give you further direction?

6 A. Yes, sir.

7 Q. Okay. You are holding the perimeter until a
8 supervisor arrives; is that right?

9 A. Yes, sir.

10 Q. Do you know who that supervisor was?

11 A. I believe Sergeant Encinas.

12 Q. Okay. How long did you hold that position
13 until --

14 Or I'll ask you this: Did you hold that
15 position until a supervisor arrived?

16 A. Yes, I did.

17 Q. So you stayed a little bit east on Edes, near
18 your patrol car, until a supervisor arrived?

19 A. Yes, sir.

20 Q. Do you recall who it was that arrived?

21 A. I believe Lieutenant Holmgrem as well, and
22 Sergeant Encinas.

23 Q. Okay. Can you spell Holmgrem for me, is it
24 like Mike Holmgrem --

25 A. H-O-L-M --

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1 A. Yes, sir.

2 Q. Never had to shoot anybody?

3 A. No, sir.

4 Q. And at what time do your supervisors indicate
5 to you they want you to be part of the search team?

6 A. I'm unsure of the time, but Lieutenant
7 Holmgren at some point states to me to go to the
8 designated arrest team.

9 Q. Or the DAT team?

10 A. That's an abbreviation for it, sir.

11 Q. Okay. When you to the designated arrest team
12 what does that mean to you?

13 A. I took it as to join the designated arrest
14 team to see if I was needed for the DAT team.

15 Q. Were you supposed to report to somebody about,
16 I guess, further assignments at that point?

17 A. At that point I -- Sergeant Encinas was
18 speaking with other members of the designated arrest
19 team and I reported to him.

20 Q. Okay. Where were they when you reported to
21 the sergeant, or when you reported to the designated
22 arrest team? Can you point on the diagram if you can
23 see?

24 A. I believe they were somewhere in this area.

25 Q. Okay. So somewhere near the area where one of

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1 these OPD patrol cars are --

2 A. Yes, sir.

3 Q. -- indicated on this diagram?

4 A. Yes, sir.

5 Q. Do you recall who else was present when you
6 reported to Sergeant Encinas for further instruction?

7 A. Yes, sir.

8 Q. Who else was there?

9 A. Officer Miguel Masso, Officer Jeremy Stein,
10 Sergeant Encinas and three Alameda County Sheriff's
11 Office deputies.

12 Q. Okay. So the sheriff's deputies were there on
13 the scene when you reported, first reported to Sergeant
14 Encinas?

15 A. Yes, sir.

16 Q. Did you hear what they were talking about upon
17 your approach?

18 A. I cannot remember.

19 Q. Now, what was the first thing you recall being
20 said after you, I guess, went to that vicinity where
21 the search team's plan was being developed?

22 A. I do not remember what was said at that time.

23 Q. Do you remember any instructions that were
24 given to you?

25 A. No, I do not.

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1 So then the first place you do get to search
2 is this, you know, larger place that's west; is that
3 right?

4 A. Yes, sir. There's an apartment complex of
5 some type.

6 Q. Okay. Did you have any indication that this
7 suspect you were chasing may have gone in this area
8 with this apartment complex?

9 A. I think, based on the fact -- due to where the
10 vehicle was parked, it was assumed that could have been
11 a flight path of his.

12 Q. Okay. Were you given any direction by the
13 Alameda County Sheriff's Department officers when you
14 guys began this search of this apartment complex?

15 A. Not that I recall, sir.

16 Q. What was your role and position, if you
17 recall?

18 A. I believe I held on -- as we entered into this
19 backyard I held on a door at the rear of that
20 residence.

21 Q. You waited there at the door?

22 A. Yes.

23 Q. To make sure that nobody left or entered
24 without you knowing about it?

25 A. Yes, sir.

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1 Q. Okay. When you began to search there did you
2 engage, or did you engage any of the residents of
3 these -- or the occupants of these residences? Like
4 did you knock on a door and say, hey, ma'am, sir, we
5 need to search your place?

6 A. I, me personally, I don't remember me doing
7 that. But I do remember we might have gotten keys from
8 a residence to check a door. I do remember at some
9 point other officers speaking with residents about
10 access to either their property or staying in inside.

11 Q. Okay. All right. And so you search, I guess,
12 the front part of this apartment complex; is that
13 right?

14 A. Yes, sir.

15 Q. Nothing was found, right?

16 A. No, sir.

17 Q. Go to the next house; is that right?

18 A. Yes, sir.

19 Q. About how old this house here?

20 A. I believe so, sir.

21 Q. And did you go in this house or where do you
22 search, the front yard area or what?

23 A. I believe we gain access into this backyard
24 area of this house.

25 Q. Okay.

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1 Acalanes he's part of the search team on the ground
2 with you?

3 A. I believe he was, yes, sir.

4 Q. Okay. What was your responsibility when you
5 were searching this backyard at 10538 Acalanes Drive?

6 A. At that time we were just clearing all -any
7 areas where a person could be hiding.

8 Q. Okay. It's my understanding that in one of
9 these residences in which the backyard was searched,
10 some of the occupants of the residence informed you
11 somebody might be living back there, there might be a
12 dog back there; do you recall that?

13 A. I do not recall what was spoken at that time.

14 Q. Okay. Do you recall finding someone in the
15 back of the -- back in this -- sorry. Do you recall
16 finding somebody in the outdoor or rear yard of 10538
17 Acalanes Drive?

18 A. Not that I remember no, sir.

19 Q. As far as you know, this yard was clear?

20 A. Yes.

21 Q. Did you have an understanding of whether or
22 not the canine gave any indication of someone being in
23 this yard?

24 A. Not that I remember sir.

25 Q. Okay. Did you leave this yard the same way

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1 you came in?

2 A. I believe we did, yes, sir.

3 Q. Through this long walkway here?

4 A. Driveway, yes, sir.

5 Q. Then where did you go next, was it to the house
6 next door?

7 A. Yes, sir.

8 Q. And how did you get into that backyard?

9 A. I believe we -- someone may have spoken with
10 the residents, but we eventually made it into the
11 backyard of this property.

12 Q. And it looks like there's another long
13 driveway just east of that living structure; is that
14 right?

15 A. Yes, sir.

16 Q. And you gain entrance into the backyard; is
17 that right?

18 A. Yes, sir.

19 Q. Looks like a fairly big backyard in comparison
20 to the neighboring backyard; is that fair to say?

21 A. I would say so, sir.

22 Q. Was it empty? Doesn't appear like there's a
23 lot of things in the backyard obstructing your vision
24 or view of what's in the backyard.

25 A. From what I remember, very open, like this.

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1 But I remember there was -- I believe there was some
2 type of fence, not like a wooden fence but I believe
3 like a plastic fence of some type that I believe we
4 jumped over.

5 Q. Okay. In order to gain entrance into the
6 complete backyard?

7 A. Yes, sir.

8 Q. Once you are back there are there any
9 streetlights or anything that illuminate the backyard?

10 A. I cannot remember if there was, sir.

11 Q. Did you do you recall if you used your
12 flashlights when you searched the backyard?

13 A. Yes, sir.

14 Q. And did you?

15 A. Yes, sir.

16 Q. Now, do you have a flashlight on your weapon
17 on do you have a separate flashlight that you used in
18 illuminating the backyard?

19 A. Mine is a separate flashlight, sir.

20 Q. Okay. And your weapon was drawn at this time
21 while you're searching?

22 A. It would have been drawn, sir. Only unless we
23 were hopping a fence to secure is the only time when it
24 would be secured.

25 Q. Okay. Other than that, your weapon was drawn

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1 Q. Okay. So he was closer to proximity to you
2 than he was the canine; is that right?

3 A. I'm not sure exactly how far away he was, the
4 distance-wise between him, in comparison to myself and
5 the dog.

6 Q. Okay.

7 A. I don't recall how close he was in that
8 vicinity.

9 Q. Okay. What about officer.

10 Or I'll ask this: Any of the other sheriff
11 deputies, do you recall where they were?

12 A. No, I don't recall where they were at the
13 time.

14 Q. What about Officer Masso; do you recall where
15 he was?

16 A. I believe Officer Masso was standing close to
17 me.

18 Q. Okay. So the canine's laying down and you get
19 some indication that there might be somebody the canine
20 has found. Do you remember what was said to you or how
21 you got that indication?

22 A. I believe the canine handler relayed the
23 message to Sergeant Encinas that the dog was alerting
24 against that wall.

25 Q. Okay. And when you say relayed the message to

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1 start the search.

2 Q. Yes.

3 A. So I think there was talk of going and --
4 either cutting the bolt on that lock to gain entry
5 into there.

6 Q. Okay. And were you preparing to do that, in
7 fact?

8 A. I believe we were, yes.

9 Q. Okay. And did you change your position and
10 begin to walk back to the driveway where you entered
11 the backyard at?

12 A. No, sir.

13 Q. What happened?

14 A. The canine dog jumped over the fence.

15 Q. Did you hear anyone give the canine a command
16 to jump over the fence?

17 A. Not that I remember.

18 Q. When the canine jumps over the fence could you
19 see where the dog handler was?

20 A. Yes. He was in, you know, still in the yard.

21 Q. In the same position you said he was a little
22 bit earlier?

23 A. Yes. I believe so.

24 Q. Not far from you, you can't really say how
25 close he was to the canine?

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1 this backyard where you are at after he jumped the
2 fence?

3 A. No. I'd estimate it's a six to seven foot
4 height and I could not see over.

5 Q. What about the lighting in that backyard, I
6 mean you said earlier that required a flashlight.

7 A. Yes, sir.

8 Q. Did you see any overhead lighting in the
9 adjoining backyard?

10 A. No, sir. It appeared very dark.

11 Q. Okay. After this officer, this deputy jumps
12 over the fence, what do you recall happening?

13 A. I remember Officer Stein putting out
14 radio traffic of somebody's running westbound through
15 the yards.

16 Q. Okay. What happened after that?

17 A. At that point I could hear movement inside
18 that yard now of, you know, just you could hear like,
19 you know, ground being -- definitely noise coming from
20 inside the yard of -- from inside there.

21 Q. Footsteps?

22 A. Footsteps.

23 Q. Okay. Could you hear a dog?

24 A. No, sir. I don't remember hearing a dog
25 and --

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1 Q. But you heard footsteps?

2 A. Yes, sir.

3 Q. Did you hear the deputy give any command after
4 he jumped over that fence?

5 A. Yes, sir.

6 Q. What do you recall him saying?

7 A. Show me your hands. Let me see your hands.

8 Q. Okay. What do you recall happening next?

9 A. Shortly after hearing those commands I
10 remember hearing five gunshots fired out.

11 Q. Okay. Could it have been more than five?

12 A. Possibly. I'm unsure of the amount of number.

13 Q. Did these gunshots that you heard come in
14 rapid succession?

15 A. Yes, sir.

16 Q. Is that is to say one after another?

17 A. Yes, sir.

18 Q. No real space in time in between them?

19 A. No, sir.

20 Q. Did you -- before these shots, did you see any
21 flashes of light or anything like that?

22 A. I don't remember any flashes of light.

23 Q. Did you hear any pops that sounded like a
24 small caliber gun being fired before the shots?

25 A. No, sir.

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1 Q. But you say you heard the officer or the
2 deputy say show me your hands, show me your hand; is
3 that right?

4 A. Show me your hands, let me see your hands, or
5 something to that effect. I'm unsure exactly what he
6 said but --

7 Q. Okay. Did you jump the fence after that time?

8 A. Not right after. Eventually.

9 Q. Okay. What were you doing when you heard this
10 commotion going on in this backyard next door?

11 A. I ducked behind the fence line. I made myself
12 a smaller target.

13 Q. Why did you do that?

14 A. At the time you didn't know where the gunshots
15 were coming from or who was firing the gun.

16 Q. Okay. Where were you when you ducked behind
17 the fence line, could you point that out?

18 A. I would say right by where the canine started
19 to jump over.

20 Q. So, for the record, Officer Belligan has
21 pointed out the same area where the canine hopped the
22 fence as being the area where he ducked and took cover;
23 is that fair to say?

24 A. Yes, sir.

25 Q. Right after you hear the gunfire?

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1 Q. You didn't hear that communication, whatever
2 it was?

3 A. No, sir.

4 Q. At any time during the search, and prior to
5 the time he went over the fence, did you see the canine
6 handler with his own gun out?

7 A. You know, I'm unsure if the canine handler had
8 his gun out.

9 Q. Was your gun drawn the entire time you
10 participated in the search?

11 A. Yes. Aside from hopping fences or anything
12 Luke that where I would require two hands, my gun was
13 drawn.

14 Q. And you told us earlier that when you had been
15 involved in designated arrest teams before someone was
16 assigned lethal cover, someone was assigned non-lethal
17 cover, do you recall having a particular assignment
18 during this search?

19 A. No, sir.

20 But it is one of those positions that can
21 change at any time given the situation at hand. So
22 just because someone is designated the less lethal
23 option doesn't, in fact, entitle that they will be the
24 one that always does it. It's A flowing situation
25 dynamic depending on what is happening.

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1 was eventually located.

2 Q. Okay.

3 A. Yeah. Against Edes.

4 Q. When you were in that yard do you recall the
5 dog alerting at all or paying any particular attention
6 to the fence between that yard that you were standing
7 in and the yard where the suspect was ultimately
8 located?

9 A. You know, I'm not sure. I can't remember
10 exactly if there was an indicator at that time.

11 Q. Okay. Is it fair to say that the first time
12 you recall the dog actually acting in a way that
13 suggested he or she was aware of something was when you
14 were in this yard, which is, I guess, 10536 Acalanes
15 Drive?

16 A. Yes. When the dog laid down next to the
17 fence.

18 Q. Okay. And at that point when the dog is
19 laying down by the fence is it still dark out?

20 A. Yes.

21 Q. You are still using flashlights?

22 A. Yes, sir.

23 Q. And you said that at some point Officer Stein
24 ended up on the roof of the building that has sort of
25 an L shape, and it's directly adjacent to 10538

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1 A. No, sir.

2 Q. Did you, at any time, hear any sounds from
3 Mr. Calhoun, the person who ultimately ended up as the
4 decedent?

5 A. No, sir.

6 Q. Okay. And then you said you were still in the
7 yard where you've marked your location on Exhibit 26
8 and you were near the location where you've marked the
9 canine had been laying down at the time the shots were
10 fired, correct?

11 A. Yes, sir.

12 Q. Okay. And you said you crouched because you
13 weren't sure who was shooting?

14 A. That's correct, sir.

15 Q. And that was because you thought there was a
16 possibility that the person you are searching for might
17 have a weapon?

18 A. Yes, sir.

19 Q. At what point -- how -- how did you learn who
20 fired the shots?

21 A. I believe Officer Masso relayed it either --
22 he was in close proximity so that I could hear, but he
23 was putting out over the radio that -- like officers
24 are okay, officers are uninjured; something to that
25 effect.